IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4229 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDEEP INDUSTRIES

Versus

G I D C

Appearance:

MR YN RAVANI for Petitioner

Ms. Sangeeta for M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/01/2001

ORAL JUDGEMENT

The present petition has been filed by the petitioner above named under Articles 14 and 16 of the Constitution of India, read with the provisions contained

in the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (for short, 'the Act'), for appropriate writ, order or direction directing the respondent to restore possession of the premises No.CIB/4309 Phase IV, Vatva and for declaration that the action of the respondent in taking possession of the said premises from the petitioner is arbitrary, null and void since it is taken without following due process of law. The facts which are not in dispute may be referred as follows:

2. A plot with the above description was allotted to the petitioner by the respondent Corporation under the scheme promulgated by the respondent. Certain terms and conditions were attached to the allotment of the said plot. The respondent contended that the petitioner did not pay the required amount of rent regularly, and therefore, notice under section 4(1) of the Act was issued to the petitioner which was not served upon the petitione. The competent authority under the Act, proceeded against the petitioner ex-parte, and passed an order for eviction of the petitioner from the said plot. The possession was also taken ex-parte in absence of the petitioner and, therefore, the petitioner has challenged the said action of the respondent by filing this application. It has been mainly contended here that no notice was served under section 4(1) of the Act upon the petitioner before taking the action under the Act. That therefore, the ex-parte proceedings are illegal and without authority of law. Therefore, the same has been challenged as aforesaid.

At the admission stage, notice was issued and Rule was issued thereafter. The respondent has appeared in response to the service of rule. The respondent has filed affidavit-in-reply at page 21. I have heard the learned Advocates for the parties and have perused the papers.

3. It is the contention of the petitioner that no notice under section 4(1) of the Act was served upon the petitioner by the respondent before proceeding further in accordance with the Act. On the other hand, the respondent has come out with the case that notice was issued to the petitioner but it could not be served upon the petitioner and, therefore, it was returned unserved.

4. Anyhow, the fact remains that mandatory notice under section 4(1) was not served upon the petitioner by the respondent. On this aspect of the case, learned Advocate for the petitioner has relied upon a decision

recorded in the case of M/s.Wire-Netting Stores & Anr. v. The Delhi Development Authority & Ors (1969 (3) SCC 451). There the procedure laid down in Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 was not followed. Hon'ble the Supreme Court has considered this aspect of the case and has found that the aforesaid procedure of Section 4(1) of the Act was not followed and, therefore, the entire proceedings which followed subsequently, would be vitiated. It has been observed in the said decision of the Apex Court that in any case, no opportunity appears to have been given to the petitioner for showing cause against the proposed action. It is contrary not only to the law laid down but also to the principles of natural justice. Therefore, the petition was allowed and order for restoration of the premises to the petitioner was passed. It is to be considered that section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, referred to in the said decision is almost similar and identical to the provisions contained in section 4 of the Act of 1972.

5. In that view of the matter, it is very clear that the respondent has proceeded against the petitioner ex-parte without following due process of law. Apart from the service of notice under section 4(1) of the Act, even the principles of natural justice have been violated. Therefore, the order passed ex-parte without service of notice, cannot be upheld or sustained.

6. In that view of the matter, I am of the opinion that the said action of the respondent is illegal and, therefore, it is required to be quashed and set aside. At the same time, it is made clear that the present petition succeeds on the said technical ground. Threfore, it would be open to the respondent to take fresh action against the petitioner by following due process of law.

7. In view of the above, the present petition is allowed and the order passed by the respondent against the petitioner for his eviction is quashed and set aside. The respondent is directed to restore possession of the premises in question to the petitioiner within four weeks from the date of receipt of the writ.

Rule is made absolute to the aforesaid extent. However, in the facts and circumstances, there shall be no order as to costs.

19.1.2001 [D P Buch, J.]

msp